

Commonwealth of Massachusetts

Suffolk, ss.

Boston Municipal Court
Brighton Division
No. 11-1011*****
Commonwealth

v.

Ruling on Motion For New trial

Brian Bubanas

Defendant files a motion for new trial after pleading guilty to one count of possession of Class A with Intent to Distribute on June 12, 2012. Defendant argues that the drugs seized in his case which were taken to the Hinton Lab, although never analyzed, rendered his plea unknowing and involuntary. He argues that he should be allowed to withdraw his plea based on the misconduct alleged against Annie Dookhan, a former employee of the Department of Public Health drug lab. The Hinton Lab exclusively tested drug samples for Suffolk County courts. Dookhan has been identified as a person who allegedly falsified drug analysis findings in a time period relevant to this case. For the reasons herein the motion is denied.

Defendant was arrested on September 9, 2011 after police executed a search warrant at his residence. Officers recovered personal papers in the defendant's name, three round white pills, six bags of heroin, empty plastic bags, \$369 and a drug ledger.

The Commonwealth represents that the substance in question

was never analyzed by the Hinton lab, and in fact to this date has not been analyzed. The validity of a certificate of analysis is not in question since one never issued in this matter. Defendant has not raised any additional ground that the particular drugs found in the possession of the defendant are in any way tainted apart from the fact that they were brought to the lab where Dookhan was working. The court concludes based on the information contained in defense counsel's affidavit and the Commonwealth's memorandum that drugs seized in the instant case were likely not affected.

In addition, defendant was charged with possession with intent to distribute a drug within 1000 feet of a school zone. The latter offense carries a mandatory sentence, to run on and after the sentence on the underlying charge. When Rubanas offered the plea in 2012, he successfully negotiated a dismissal of the school zone charge and a recommendation of a sentence concurrent with the sentence he was already serving. As the Commonwealth's memorandum states, defendant offered his plea based on the strength of the Commonwealth's case and the recommendation for sentencing. See *Commonwealth v. Berrios*, 447 Mass. 701 (2006); *Commonwealth v. Furr*, 454 Mass. 101 (2009). The defendant is asking this court to believe that he would have forgone a guilty plea and proceeded before a jury notwithstanding the strength of the government's case or the sentencing recommendation. The

court notes that defendant tendered his guilty plea prior to receiving any drug analysis and admitted to the elements of the offense.

Defendant asks this court to consider that while at the Hinton lab, the untested drugs were tainted. As previously noted, no evidence has been proffered that this particular substance was connected in any way to the alleged misdeeds of the one chemist at the state lab who has been charged with criminal wrongdoing or that the factual basis underlying the plea was invalid.

Both counsel agree in this case that while the investigation of the laboratory may be continuing, they seek to have the court rule on this motion based on information available to date.

For the reasons herein as well as those stated in the Commonwealth's memorandum, the motion is denied without prejudice.

Bennett, J.

5/22/13